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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/555,715

10/30/2006

Jason Bregmen

16989-2

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30565

7590

10/08/2008

WOODARD, EMHARDT, MORIARTY, MCNETT & HENRY LLP
111 MONUMENT CIRCLE, SUITE 3700
INDIANAPOLIS, IN 46204-5137

EXAMINER

VERAA, CHRISTOPHER

ART UNIT

PAPER NUMBER

3611

MAIL DATE

DELIVERY MODE

10/08/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/555,715	Applicant(s) BREGMEN ET AL.	
	Examiner CHRISTOPHER E. VERAA	Art Unit 3611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 28-47 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 28-47 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/4/05</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 32 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 32, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 28-31, 33-37, 42, 43, 46, and 47 are rejected under 35 U.S.C. 102(b) as being anticipated by Gundlach (US-5966105).

As to claims 28 and 29, Gundlach teaches an enclosure, a frame adapted to hold an interlaced image 20a, and an optical barrier comprising grills 22.

As to claim 30, Gundlach teaches (see figure 6) applying the image to a transparent material 23.

As to claim 31, Gundlach teaches applying the image to a single piece of material.

As to claim 33-35, Gundlach teaches grills having circular segment cross-sections with a curved face where the vertex of grills is the smallest distance between the image and the grills.

As to claims 36 and 37, the grills are arranged in a vertically oriented linear array with a gap between adjacent grills.

As to claims 42 and 43, the enclosure is adapted to house flurescent lights sources (column 7, lines 15-17).

As to claim 46 and 47, McKinley teaches that the relative position of the image frame and optical barrier is adjustable (column 6, line 5) by adjusting the angle, or tilting, the louvres of the optical barrier.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 32, 38-41 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over McKinley (US-5966105).

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As to claims 32 and 44, the examiner takes OFFICIAL NOTICE that anodized aluminum is a very well known structural material for any application requiring corrosion protection. McKinley specifically teaches that the prior art device may be used for roadside billboards and it would have been obvious to one of ordinary skill in the art to manufacture the enclosure and the grills from anodized aluminum, an opaque, non-reflecting material, in order to provide a corrosion resistant structure.

As to claims 38-41, the functionality of the features claimed is identical to that of McKinley and it is well established that further optimization of specific dimensions and proportions is either the result of ornamental design or routine experimentation, which is within the capabilities of one of ordinary skill in the art. The claimed dimensions and proportions are therefore obvious to one ordinary skill in the art.

Claim 45 is rejected under 35 U.S.C. 103(a) as being unpatentable over McKinley (US-5966105) in view of Erbey (US-6476850). McKinley lacks teaching that the distance between the grill and the image is adjustable. Erbey teaches a similar device where the distance between the optical barrier and the interlaced image can be adjusted to allow for a variable viewing distance. It would have been obvious to one of ordinary skill in the art to make this distance adjustable to allow greater flexibility in viewing situations.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER E. VERA who's telephone number is (571)272-2329. The examiner can normally be reached on Monday through Friday, 8:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on 571-272-6651. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/C. E. V./

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Examiner, Art Unit 3611

/Paul N. Dickson/

Supervisory Patent Examiner, Art Unit 3600